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CASE 12.924

REPORT ON MERITS

**JULIO CÉSAR RAMÓN DEL VALLE AMBROSIO and
CARLOS EDUARDO DOMÍNGUEZ LINARES**

ARGENTINA

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I. SUMMARY

1. On July 10 and October 4, 2000, Julio César Ramón Del Valle Ambrosio and Carlos Eduardo Domínguez Linares each lodged,¹ petitions with the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR"), alleging the international responsibility of the Republic of Argentina (hereinafter "Argentina," "the State," or "the Argentine State") for the purported nonexistence of an ordinary remedy enabling them to appeal their criminal convictions in judgments handed down in the province of Córdoba, Argentina. They said that in the appeals that were filed consideration was only given to formal aspects, with no analysis of the merits.

2. The State did not present arguments regarding the alleged violations at either the admissibility or merits stages.

3. After analyzing the information available, the Commission concluded that the Argentine State is responsible for violation of the rights to judicial guarantees and judicial protection recognized in Articles 8.2.h and 25.1 of the American Convention, in conjunction with the obligations contained in Articles 1.1 and 2 thereof, to the detriment of Julio César Ramón Del Valle Ambrosio and Carlos Eduardo Domínguez Linares. The IACHR made the corresponding recommendations.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On July 11, 2013, the Commission adopted Report No. 35/13 in which it declared the admissibility of a number of petitions that had been joined, including those relating to Messrs. Julio César Ramón Del Valle Ambrosio and Carlos Eduardo Domínguez Linares.² The Commission decided that the 21 petitions admitted therein would continue to be analyzed by province so that, from then on, the petitions lodged by Messrs. Del Valle Ambrosio and Domínguez Linares would be processed in the case file as case number 12.924.

5. On September 6, 2013, the Inter-American Commission transmitted the admissibility report to the Parties and gave the petitioners four months to submit any additional observations on the merits. In the same communication, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter.

6. On March 14, the Commission received the petitioners' observations on the merits. In that communication they rejected the possibility of a friendly settlement process.³

7. On May 21, 2015, the Commission forwarded those observations to the State and asked it to submit its observations on the merits within four months. On March 17, 2016, the Commission informed the State that it was not possible to grant it an extension of the time allowed for presenting its observations because that would exceed the maximum time allowed under Article 37 of the Rules of Procedure.

¹Both petitions were lodged by attorney Ramiro Hernán Rúa.

² IACHR, [Report No. 35/13](#), Petition 828-01, Admissibility. *Marcelo Darío Posadas et al*, July 11, 2013.

³ The petitioners stated that during the admissibility stage they had attempted to reach a friendly settlement with the State, as part of which the State had acknowledged violation of the American Convention, but no progress had been made with amending the laws or with reparation.

Nevertheless, the Commission stated that it looked forward to having the State participate in due course. The Commission has not yet received the State's observations on the merits.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioning party pointed out that Julio César Ramón Del Valle Ambrosio and Carlos Eduardo Domínguez Linares were sentenced on December 23, 1997 by the Ninth Criminal Court in Córdoba to 3 years and 6 months in prison, convicted of the crime of aggravated fraud for obtaining and using on their own behalf loans granted by several financial institutions to the Solares S.R.L. limited liability company.

9. The petitioning party stated that appeals for annulment (cassation) of the conviction were filed, since that was the remedy available for challenging a lower court decision, but that those appeals were rejected because they allegedly lacked proper substantiation. It also stated that extraordinary appeals were filed and formally dismissed since, in the court's opinion, the convictions had not been arbitrary. The petitioning party filed appeals against those rulings with the Supreme Court of Justice, which rejected them.

10. The petitioning party argued that Messrs. Del Valle Ambrosio and Domínguez Linares were deprived of their right to review of the conviction by a higher court, which gave rise to a "dissatisfaction disrupting due process through formal, unsubstantiated rejection, without any analysis of the merits." It also claimed violation of the right to judicial protection.

11. The petitioning party stated that a regulated, interpreted, and strictly applied appeal for annulment does not constitute a simple remedy for examining the validity of the judgment against which an appeal has been filed and for safeguarding the accused's fundamental rights, especially the right to defense in a trial and the right to due process of law. It pointed out that the fact that the State had taken steps to draft a bill to resolve the issue during the search for a friendly settlement at the admissibility stage implied that Argentina acknowledged a violation of the Convention.

B. Position of the State

12. The State did not present observations on the merits in the instant case. During the admissibility stage it stated that, although it had not been notified of the petition within a reasonable period of time and although both the now joined proceedings and the provincial jurisdictions in which the 21 petitioners had been convicted were initially separate, it wished to propose opening up an opportunity for dialogue aimed at exploring the possibility of a friendly settlement based on regulatory amendments.

13. On September 6, 2007, during a working meeting held in connection with the Commission's 130th period of sessions, the State announced the establishment, through Executive Decree 115/07, of a Commission to Reform the Code of Criminal Procedure. On March 9, 2010, the State maintained that the fact that it had offered to engage in a dialogue and had held working meetings with the petitioners and with the Commission formed part of "the State's traditional policy of cooperation and could not be construed as acknowledgment of legal merits."

IV. DETERMINATIONS OF FACT

14. The Commission will present the facts it regards as proven based on the evidence in the file, in the following order: A) The relevant criminal procedure legal framework with respect to appeals B) Judicial practice in Argentina and the "Casal" ruling of 2005; and C) The criminal proceedings in respect of Julio César Ramón Del Valle Ambrosio and Carlos Eduardo Domínguez Linares.

A. The relevant criminal procedure legal framework in terms of remedies

15. In this section, the relevant legal framework for the appeals filed by the alleged victims against the judgment of conviction for the crime of aggravated fraud (*defraudación calificada*).

16. Article 468 of the Criminal Procedures Code of the Province of Córdoba (*Código Procesal Penal de la Provincia de Córdoba*—hereinafter the “CPPC”), with contents almost identical to those of Article 456 of the Criminal Procedures Code of the Argentine Nation (*Código Procesal Penal de la Nación Argentina*—hereinafter the “CPPN”), governs the admissibility of the cassation appeal on the basis of the following:

Grounds. The cassation appeal can be filed on the following grounds:

1) 1) Failure to observe or erroneous application of substantive law.

2) Failure to observe the standards set by the present Code under penalty of inadmissibility, expiration, or quashing, as long as the complainant, except in cases of absolute quashing, had filed a claim, on a timely basis, to remedy the defect, if possible, or had given notice that he would file a cassation appeal.

17. Regarding the filing of this appeal, Article 480 of the CPPM, almost identical to Article 463 of the CPPN, establishes that:

Filing. The cassation appeal shall be filed before the court that issued the ruling within 15 days after notification and in writing with the attorney’s signature, where the legal provisions that are deemed to have been breached or erroneously applied shall be cited and the application that is being called for shall be indicated.

Each reason must be indicated separately with its justifications. Outside of this opportunity no other reason can be claimed.

The complainant must indicate if he or she shall report orally.

18. Regarding the inadmissibility or rejection of the appeal, Article 455 of the CPPC indicates that:

Inadmissibility or Rejection. The appeal shall not be granted by the Court that issued the ruling being challenged when the latter is not subject to appeal or when it is not filed on time by whoever is entitled to file it.

If the appeal is inadmissible, the higher court must declare it is so, without making any ruling about the merits. It must also reject the appeal when it is evident that it is substantively out of order.

19. As for the extraordinary federal appeal, the Civil and commercial Procedural Code of the Nation establishes the following:

Article 256. The extraordinary appeal filed before the Supreme Court shall proceed on the basis of the assumptions established in Article 14 of Law 48.

Article 257. The extraordinary appeal must be filed before the judge, court, or administrative body that issued the ruling that is at the origin of the appeal and it must be filed in writing within ten (10) days of the notification.

[...]

20. Article 14 of Law 48 stipulates the following:

Once a case has been filed before the Courts of the Province, it shall be heard and judged in the provincial jurisdiction, and judgments issued by superior provincial courts can only be appealed before the Supreme Court in the following cases:

1. When the complaint has challenged the validity of a Treaty, a Law enacted by Congress, or an authority exercised on behalf of the Nation and the ruling has been against its validity.
2. When the validity of a law, decree, or authority of a Province has been challenged because it is claimed that it goes against the National Constitution, Treaties, or laws enacted by Congress and the ruling has supported the validity of said law or provincial authority.
3. When the intelligence of any clause of the Constitution or Treaty or law enacted by Congress or a commission exercised on behalf of the national authority has been challenged and the decision goes against the validity of the title, right, privilege, or exemption on which said clause is based and is the target of litigation.

21. Article 485 of the CPPC, regulates the admissibility of the remedy of complaint on the same grounds as those established in Article 476 of the CPPN:

When an appeal admissible before another Court is improperly denied, the appellant may file a remedy of complaint with the latter to have it declare the appeal improperly rejected.

B. Criminal proceedings against the alleged victims

22. On December 20, 1996, the Seventh Shift Public Prosecutors' Office (*Ministerio Fiscal del Séptimo Turno*) asked the public prosecutor to bring to trial the case against the accused Messrs. Carlos Eduardo Domínguez Linares and Julio Cesar Ramón Del Valle Ambrosio.⁴

23. On December 23, 1997, the Ninth Criminal Court of Córdoba resolved to declare Carlos Eduardo Domínguez Linares and Julio Cesar Ramón Del Valle Ambrosio necessary accomplices to the crime of aggravated fraud on account of fraudulent administration under the terms of Article 45, 174.5, and 173.7 of the Criminal Code and to sentence each of them to three years and six months in prison, subsidiary penalties and legal costs (Articles 9 and 12 of the Criminal Code; 550 and 551 of the Code of Criminal Procedure of the Province of Córdoba).⁵

24. The defense attorney for Carlos Eduardo Domínguez Linares filed an appeal for annulment against the conviction arguing that it had "made a mistake in its application of the Criminal Code [...]." In his writ, he compares the provisions of the criminal code with the contents of the judgment. Thus, he states that "it established the fact and accusation against my client based on the unnecessary or excessive RISK to the Bank's property caused by the managers due to the loans granted." He goes on to say that "harm required by law in this form of commission of an offense must be ACTUAL not potential. There had to have been a REDUCTION of property following the action called into question." He adds in the appeal that "Your Excellency's judgment based my client's conviction on a circumstance that was decisive for the criminal accusation against him given the legal characterization of the conduct regarded as criminal. As already mentioned, that circumstance WAS NOT DESCRIBED IN THE INDICTMENT, which CONSTITUTES A [illegible]"

⁴ Annex. Injunction to bring to trial dated December 20, 1996. Annex to the initial petitions.

⁵ Annex. Ninth Criminal Court of Córdoba, Judgment No. 47, dated December 23, 1997, back of folio 250, point XIII. Annexed to the initial petition of Mr. Julio Cesar Ramón del Valle Ambrosio.

FACT pursuant to Article 389 of the C.P.P., without the prescriptions of said legal [illegible] having been met in the discussion."⁶

25. On February 19, 1998, the defense attorney for Julio Cesar Ramón Del Valle Ambrosio also filed an appeal for annulment (cassation) against the conviction. From the case file it transpires that the appeal was filed on account of:

[...] erroneous application of substantive law due to failure to follow the rules established by the Code on pain of inadmissibility, extinction, or nullity, because in his opinion the Court wrongly assessed the evidentiary material produced as proof and in so doing violated Article 406 of the Code of Criminal Procedure (C.P.P.) by not having granted AmBrosio the benefit of the doubt, as well as Article 413.4 of the C.P.P., particularly since the rules regarding sound rational criticism were not observed in respect of vital evidence as required under Articles 39, 115, and clauses consistent with them in the Constitution of the Province of Córdoba and Article 18 of the National Constitution.⁷

26. The Ninth Criminal Court of Córdoba decided to admit the appeals and to refer them to the Criminal Division of the Superior Court of Justice.⁸

27. On December 17, 1998, the Criminal Division of the Superior Court of Justice of Córdoba decided to declare the appeal for annulment on behalf of Carlos Eduardo Domínguez Linares formally inadmissible.⁹ That Division stated that:

[...]

2. It is established case law doctrine of the Criminal Division, based on an old precedent maintained in successive pronouncements, that an appeal for annulment on substantive grounds is inadmissible if it ignores, bends or modifies the facts on which the trial court based its legal finding that the appellant deems mistaken or failed to reach the finding that the appellant deems correct [...].

Said doctrine matches the interpretation agreed upon by lawmakers, according to which, in respect of the substantive ground for annulment (CPP, Article 468.1), [illegible] coordinates the unified interpretation of the substantive law (*interpretación unitaria de la ley de fondo*), in the end leaving it up to the [illegible] High Court of the Province to interpret the law. It is before said Court that the [illegible] action with the definitively established facts of the case [Tr. are used to? "illegible"] reach a legal finding, whereby only legal correctness is assessed [...] **[TRANSLATOR'S NOTE: The repeated "illegibles" make it impossible to produce a reliable translation]**

3. In the instant case, the appellant expresses disagreement with the legal assessment of the facts, ignoring all the fact-based conclusions reached by the judge, according to which the conduct of which the accused is charged did not merely consist of noncompliance with a contract (which could resemble potential damage) but rather of

⁶ Appeal for annulment filed on behalf of Carlos Eduardo Domínguez Linares, folio 82, annexed to his initial petition.

⁷ Interlocutory judgment No. 7 of March 5, 1998, folio 86. Annexed to the initial petition of Mr. Carlos Eduardo Domínguez Linares received on October 4, 2000.

⁸ Interlocutory judgment No. 7 of March 5, 1998, back of folio 88. Annexed to the initial petition of Mr. Carlos Eduardo Domínguez Linares received on October 4, 2000.

⁹ Judgment of the Criminal Division of the Superior Court of Justice, order No. 396, "Pompas Jaime et al accused of aggravated fraud - appeal for annulment" proceedings, of December 17, 1998, back of folio 104, and official notice of judgment dated December 18, 1998, notifying denial of the appeal for annulment, both attached to the initial petition corresponding to Mr. Julio Cesar Ramón del Valle Ambrosio Folio received on July 10, 2000.

primary complicity in eliciting fraudulent loans which occasioned (sic) actual harm to [illegible] Banco Social. Taking as a basis [for the? -"illegible"] appeal isolated references by the ["illegible"] sentencing judge regarding unnecessary risk, [the appellant describes them? "illegible"] as the decisive argument for the ruling, without [clearly? "illegible"] demonstrating their relevance and limiting the [illegible] appeal to that argument.

[...]

II.1 The defense attorney for the accused Domínguez Linares files for annulment of the judgment arguing that it is inconsistent with the accusation.

[...]

2. The appeal for annulment on formal grounds is inadmissible for the following reasons:

a) As the jurisprudence of this Division has invariably found, the appeal must demonstrate a [illegible] grievance authentically based on records of the proceedings, so that if those records are bent, ignored, or modified and [illegible] the case for a wrong having been committed is built around such alterations, irrespective [illegible] of the actual proceedings, the [illegible] challenge to the judgment is not formally viable [...].

That is the problem with the appeal filed regarding the alleged defect of a lack of correlation between the indictment and the judgment.

This is so because, first, the appellant limits the facts to the initial loan, when both the indictment and the judgment in reference to it include numerous other loans they deem to have been fraudulently obtained and to be prejudicial, as indicated in connection with the first grievance (I.3.a, above).

Second, only with respect to the initial loan included in both the indictment and the judgment is reference made to the security guarantee on the property in the cemetery.

As can be seen when the indictment (folios 422/455) is compared with the establishment of the fact accredited in the judgment (folios 586/618, both procedural acts agree that the property used as collateral for the loan was overvalued and that it consisted of a space in a cemetery the legal nature of which meant that there would be restrictions on executing the security. Both likewise make mention of the harmful practice of accepting lots in another cemetery in payment.

The inclusion in the aforementioned judgment regarding the trading of inventory that would affect the value and possibility of executing the property pledged as security was made along with others [...], which were indeed also mentioned in the indictment. The same applies to [the? illegible] reference to the convicted personnel of the Bank having accepted "a particular situation [...]", that was mentioned along with other identical circumstances described in the indictment relating to wrongful and willful misconduct.

With his dogmatic assertion that those circumstances were decisive, the appellant failed to substantiate that appraisal, particularly since he fails to attempt to demonstrate their decisive nature so as to show a lack of correlation in respect of their formal admissibility in line with the Division's invariable jurisprudence [...].

b) It is to be pointed out that the appellant, referring only to the initial loan alluded to in both the indictment and the judgment, identifies the lowering of the security guarantee as a result of the subsequent sale of the cemetery lots, which for the trial court

constituted facts ascertained in the debate proceedings that were not included in the indictment and were therefore excluded from the judgment, [...]

Given that the appeal also proceeds to question the item in the operative part of the judgment that, based on those grounds, ordered, in [light of? "illegible"] those facts, to return the proceedings to the court of first instance "for the purposes it deems fit" (*a sus efectos*), strictly speaking [illegible] the matter cannot be appealed (CPP. 469) [illegible] item is not a final judgment and does not preclude the assertion of defense arguments in due course concerning ["illegible"] identity between those facts regarding which no criminal prosecution [has? "illegible"] yet begun and those included [in the? "illegible"] conviction.

[...]

RESOLVES: To declare that the appeal for annulment filed on behalf of the accused Carlos Eduardo Domínguez Linares is formally inadmissible (CPP 455 and 474). With payment of costs (CPP 550/551)¹⁰

28. According to information presented by the petitioning party, and not contested by the State, on December 17, 1998 the Criminal Division of the Superior Court of Justice of the Province of Córdoba resolved, along similar lines, to declare the appeal for annulment in respect of Mr. Julio Cesar Ramón Del Valle Ambrosio inadmissible.¹¹

29. The petitioning party stated that on February 4, 1999, defense counsel for Mr. Del Valle Ambrosio filed an extraordinary appeal with the Supreme Court of Justice of the Nation against the ruling declaring the appeal for annulment formally inadmissible.¹² It indicated that Mr. Domínguez Linares filed an extraordinary appeal on February 5, 1999.¹³

30. On June 16, 1999, the Criminal Division of the Superior Court of Justice of Córdoba declared the extraordinary appeal on behalf of Mr. Domínguez Linares formally inadmissible, pointing out that:

The arbitrariness doctrine developed by the Supreme Court of Justice has repeatedly established that this type of appeal is not designed to correct in a third instance decisions that the appellants deem mistaken, but rather to review pronouncements seen to lack even the minimal qualities required for the challenged ruling to constitute a judicial resolution (CSJN, Decisions 237:74, 239:126).

The use of such appeals is, moreover, particularly restricted in the case of resolutions handed down by the highest provincial courts that decide on the local appeals brought to its attention ("Pérez Ángel", 15/5/90).

When it is a question of interpreting ordinary or local law, in order to use exceptional appeals it is not enough just to invoke arbitrariness in the appealed resolution, if that invocation is not preceded by a substantiated critique of each and every argument upheld in the conclusion that offends the appellant (CSJN, Decisions 308:761; 308:2421; 310:722; 311.499; 311:2619).

¹⁰ Judgment of the Criminal Division of the Superior Court of Justice, order No. 396, "Pompas Jaime et al accused of aggravated fraud - appeal for annulment" of December 17, 1998, back of folio 102, point 2. A, Annexed to the initial petition corresponding to Mr. Carlos Eduardo Domínguez Linares received on July 10, 2000.

¹¹ Initial petition corresponding to Mr. Julio Cesar Ramón del Valle Ambrosio, p. VIII, received on July 10, 2000.

¹² Initial petition corresponding to Mr. Julio Cesar Ramón del Valle Ambrosio, p. VIII, received on July 10, 2000.

¹³ Extraordinary appeal filed by Dr. Carlos María Lescano Roque on behalf of Carlos Eduardo Domínguez Linares, folio 107-117, annexed to the initial petition of Mr. Carlos Eduardo Domínguez Linares received on October 4, 2000.

In this case, the writ is no more than a condensed reiteration of the wrongs brought to the attention of this Division in the appeal for annulment -- as the Attorney General points out in his opinion -- but with an inept critique with respect to the grounds explained in the judgment that rejected them.

[...]

In short, the appellant's new appeal amounts to an attempt to achieve another review, in third instance, of a resolution with which he disagrees and in which he discusses the interpretation of matters of ordinary law without proper substantiation addressing each and every one of the arguments in the ruling criticizes.

Thus, as already pointed out, that intention leads the complainant to err with regard to the subject matter that can be appealed under the procedural remedy referred to in Article 14 of Law No. 48 and that error takes the form of a claim that exceeds the carefully defined and exceptional competence of the Honorable C.S.J.N, thereby rendering the appeal inadmissible.¹⁴

31. According to information submitted by Julio Cesar Ramón Del Valle Ambrosio, which was not contested by the State, on that same date the Criminal Division of the Superior Court of Justice of Córdoba declared the extraordinary appeal filed on his behalf formally inadmissible.¹⁵

32. On July 5, 1999, defense counsel for Messrs. Domínguez Linares and Del Valle Ambrosio filed a complaint against refusal to allow an appeal with the Supreme Court of Justice of the Nation¹⁶ against the ruling of June 16, 1999. On March 21, 2000, the Supreme Court resolved in a single paragraph:

That the extraordinary appeal whose rejection lead to the present complaint is inadmissible (Article 280 of the Code of Civil and Commercial Procedure).

For that reason, the complaint is dismissed.¹⁷

C. Judicial practice in Argentina and the 2005 “Casal” judgment

33. From the above, it turns out that the legal framework applicable at the time of the incidents in the Province of Córdoba envisaged the cassation appeal as a means to appeal a judgment of conviction issued by a judge of the court of first instance. The Commission reiterates that the admissibility of said appeal is regulated in almost identical terms in the CPPC and CPPN.

34. The Supreme Court of Justice of the Nation in the judgment known as the “Casal judgment,” issued on September 20, 2005, referred to how the judges and, in particular, the National Courts of Criminal Cassation Appeals restrictively interpreted the scope of the reviewable case on the basis of a cassation appeal. In the words of the Supreme Court of Justice of the Nation:

¹⁴ Judgment of the Criminal Division of the Superior Court of Justice, ruling No. 222, "Pompas Jaime et al accused of aggravated fraud - extraordinary appeal " proceedings, of June 16, 1999, back of folio 122, attached to the initial petition corresponding to Mr. Carlos Eduardo Domínguez Linares received on July 10, 2000.

¹⁵ Initial petition corresponding to Mr. Julio Cesar Ramón del Valle Ambrosio, p. VIII, received on July 10, 2000.

¹⁶ Complaint regarding refusal to allow an appeal (*recurso de queja*) filed by Dr. Carlos María Lescano Roque. Annexed to the initial petition of Mr. Carlos Eduardo Domínguez Linares received on October 4, 2000 and initial petition corresponding to Mr. Julio Cesar Ramón del Valle Ambrosio, p. VIII, received on July 10, 2000.

¹⁷ Judgment of the Supreme Court of Justice of the Nation, de facto appeal (*recurso de hecho*), "Pompas Jaime et al accused of aggravated fraud - proceedings No. 1/99 "p", of March 21, 2000, attached to the initial petition of Mr. Carlos Eduardo Domínguez Linares received on October 4, 2000.

It is illustrative, for explanatory purposes, to stress that this concept of differentiation between matters of fact and law, defects *in iudicando* and defects *in procedendo*, defects of activity, and defects of judgment or any other differential classification on targeted matters has distorted the practice of filing appeals in the National Courts of Cassation Appeals.

The complainants, in general, warned about the restrictive policy in admitting appeals, attempt to focus the grievances they are developing on the basis of the formulation of subparagraph 1 of Article 456 of the Criminal Proceedings Code of the Nation, in other words, under the assumption of failure to observe or erroneous application of the substantive law, in case where problems of classification are discussed. The truth is that a large part of these objections introduce and, at the same time, focus on problems that have to do with the facts, evidence, and their appraisal, whether to demonstrate the existence or absence of some element of an objective kind, willful misconduct, or subjective elements other than the willful misconduct comprising the criminal classification.

[...] it is well known that defenders, aware of the jurisprudential reluctance to discuss the grievances associated with the facts or the evidence and its appraisal in the framework of cassation appeals, tend to force the scope of subparagraph 1 of Article 456 of the Criminal Proceedings Code of the Nation.¹⁸

35. Precisely after considering that the distinction between matters of law, on the one hand, and matters of fact or appraisal of evidence, on the other hand, must not determine the scope of the cassation appeal review, the Supreme Court of Justice of the Nation issued the Casal judgment, whereby it provided a broader interpretation. The Casal judgment provides a highly relevant assessment of the regulatory framework and practice at the time of incidents, and thus certain considerations are presented in the section on analysis of law that are relevant to make the recommendations, specifically about the non-repetition component.

V. ANALYSIS OF LAW

A. Right to appeal the judgment before a higher judge or court¹⁹ and right to judicial protection²⁰

1. General considerations on the right to appeal a judgment

36. The right to appeal a judgment before a different higher-ranking judge or court is a basic guarantee in the framework of due process of law, whose ultimate purpose is to avoid consolidating a situation of injustice.²¹ According to inter-American jurisprudence, the goal of this right is to make it possible for an adverse judgment to be reviewed by a judge or court that is different and higher-ranking²²

¹⁸ Casal, Matías Eugenio et al. attempted simple theft, Case No. 1681, Supreme Court of Justice of the Argentine Nation, September 20, 2005.

¹⁹ Article 8.2 h) of the American Convention establishes the following: Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: (...) h. the right to appeal the judgment to a higher court.

²⁰ Article 25.1 of the American Convention establishes the following: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

²¹ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 186.

²² IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 186. Quoting. Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 242; *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of

[continues ...]

and to prevent the final consolidation of a decision that was adopted with defects and contains errors that might lead to undue harm to the interests of a person.²³ Due process of law cannot be effective without the right to defense in a trial or the opportunity to defend oneself against a judgment on the basis of adequate review.²⁴

37. The Court has contended that “the second court ratification [*doblo conforme*], expressed by means of access to an appeal that grants the possibility for a comprehensive review of a judgment of conviction, confirms the principle and grants greater credibility to the State’s jurisdictional action and, at the same time, provides greater security and safeguards the rights of those convicted.”²⁵

38. In that respect, for international human rights law, the denomination or name given to this appeal is irrelevant;²⁶ what is important is that it should meet certain standards. First of all, it must take place before the judgment becomes *res judicata*²⁷ and it must be settled within a reasonable period of time, that is, it must be *timely*. It must also be an *effective* remedy, that is, it must yield results or responses in terms of the purpose for which it was conceived,²⁸ that is, it must prevent consolidating a situation of injustice. In addition, it must be *accessible*, without requiring further formalities that might render the right illusory.²⁹

39. The Commission underscores that the appeal’s effectiveness is closely linked to the scope of possibilities for appealing a judgment.³⁰ Because it is possible that judicial authorities will make mistakes leading to a situation of injustice, this cannot be confined to enforcement of the law, but rather it includes other aspects such as the determination of the facts or the criteria for appraising evidence. Thus, the appeal shall be effective in achieving the purpose for which it was conceived, if it allows a review of such matters without confining its admissibility *a priori* to given points of law in the proceedings of the court authority.³¹

[... continuation]

July 2, 2004. Series C No. 107, para. 158, and *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 97.

²³ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 186. Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 158. See, in general: IACHR, Report No. 24/17, Case 12.254, Merits. Víctor Hugo Saldaño. United States. March 18, 2017, para. 204.

²⁴ IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella (Argentina), November 18, 1997, para. 252.

²⁵ Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 242; *Case of Barreto Leiva v. Venezuela*. Judgment of Merits, Reparations and Costs. November 17, 2009. Series C No. 206, para. 89; *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 97; Inter-American Court. *Case of Liakat Ali Alibux v. Suriname*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of January 30, 2014. Series C No. 276, para. 85.

²⁶ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 165; United Nations Human Rights Committee. *Gómez Vázquez v. Spain*. Communication No. 701/1996. Decision of 11 August 2000, para. 11.1.

²⁷ United Nations Human Rights Committee. *Bandajevsky v. Belarus*. Communication No. 1100/202, Decision of 18 April 2006, para. 11.13. Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 158; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

²⁸ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 161; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

²⁹ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 164; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³⁰ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 188.

³¹ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al. (Juveniles sentenced to life time imprisonment), Argentina, November 2, 2010, para. 186.

40. Regarding this, in the case of *Abella versus Argentina*, the Inter-American Commission indicated the following:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should, in the first place, apply to [...] the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.

[...]

The remedy should also allow the higher court a relatively simple means to examine the validity of the judgment appealed in general, as well as to monitor the respect for fundamental rights of the accused, especially the right of defense and the right to due process.³²

41. As for the Human Rights Committee of the International Covenant on Civil and Political Rights (CCPR), it has repeatedly established that:³³

Every person's the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, as long as the procedure allows for due consideration of the nature of the case. A review confined to only the formal or legal aspects of the judgment falls short of the requirements of the Covenant.³⁴

42. Along the same line of what is established by the CCPR Human Rights Committee, the IACHR underscores that the right to appeal does not entail necessarily a new trial or a new "hearing," as long as the court undertaking the review is not prevented from examining the facts of the case.³⁵ What is required by the standard is the possibility of pointing out and securing a response to the errors that might have been made by the judge or court, without excluding a priori certain categories such as the facts and the appraisal and receipt of the evidence. The way and means whereby the review is conducted shall depend on the nature of the questions being discussed, as well as the specificities of the criminal procedures system in the State concerned.³⁶

43. These standards governing the right to appeal a judgment were accepted by the Inter-American Court in the case of *Mendoza et al. v. Argentina*. In particular, with respect to the scope of the

³² IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, paras. 261-262.

³³ The wording of Article 14.5 of International Covenant on Civil and Political Rights (CCPR) is substantially similar to that of Article 8.2.h of the American Convention; therefore the interpretations made by the United Nations Human Rights Committee in connection with the contents and scope of this article are relevant as a guidelines for interpreting Article 8.2.h of the American Convention.

³⁴ United Nations Human Rights Committee. *Aliboev v. Tajikistan*, Communication No. 985/2001, Decision of 18 October 2005; *Khalilov v. Tajikistan*, Communication No. 973/2001, Decision of 30 March 2005; *Domukovsky et al. v. Georgia*, Communication No. 623-627/1995, Decision of 6 April 1998; and *Saidova v. Tajikistan*, Communication No. 964/2001, Decision of 8 July 2004.

³⁵ United Nations Human Rights Committee. General Comment No. 32 "Article 14. Right to equality before tribunals and courts and to fair trial." 2007, para. 48.

³⁶ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al. (Juveniles sentenced to life time imprisonment), Argentina, November 2, 2010, para. 189.

review, the Court contended that, regardless of the appeal regime or system adopted by the States Parties and the name given to the means for challenging a conviction, to be effective it must consist of an adequate means to ensure rectification of an erroneous conviction.³⁷ This requires the possibility of analyzing the factual, evidentiary, and legal questions on which the judgment being challenged is based, because in jurisdictional activities there is an interdependence between determinations of fact and the application of law, so that an erroneous determination of the facts entails a mistaken or improper application of the law. As a result, the causes for admissibility of an appeal must make it possible to exercise broad control over those aspects that are being challenged in the judgment of conviction.³⁸ The Court also specified, along the same line as what the Commission has contended in its merits report of the said case, that the appeal must respect minimum procedural guarantees, which under Article 8 of the Convention are relevant and necessary to resolve the grievances filed by the complainant, which does not mean that a new trial must be held.³⁹

44. Furthermore, in terms of the appeal's accessibility, the Commission considers that, at first, the regulation of some minimum requirements for the appeal's admissibility is not incompatible with the law contained in Article 8.2 h) of the Convention. Some of these minimum requirements are, for example, the filing of the appeal as such, since Article 8.2 h) does not require an automatic review or the regulation of a reasonable period of time during which it must be filed.⁴⁰ Nevertheless, under certain circumstances, rejection of the appeals because of failure to meet formal requirements legally established or defined by judicial practice in a given region, can turn out to be a violation of the right to appeal a judgment.⁴¹

45. Below, the Commission shall analyze whether, in Mr. Del Valle Ambrosio and Mr. Domínguez Linares' trials, the guarantee envisaged in Article 8.2 h) of the American Convention has been respected, taking into account the applicable regulatory framework and the specificities of the appeals filed in this concrete case.

2. Analysis of the case

46. Based on the proven facts, the defense attorneys for Messrs. Del Valle Ambrosio and Domínguez Linares filed appeals for cassation, federal extraordinary appeals and remedies of complaint, against the judgment of December 23, 1997 which declared them to be necessary accomplices in the crime of aggravated fraud due to fraudulent management and sentences them to three years and six months' imprisonment. According to national criminal procedural legislation and the legislation of the Province of Córdoba, cassation is the remedy that is applicable to challenge a judgment of criminal conviction in a court of first instance. In that regard, this is the principal appeal that the IACHR must analyze in order to determine if it meets the requirements of the right enshrined in Article 8.2 h) of the Convention⁴².

47. First of all, the Commission underscores that Article 468 of the CPPC regulates the two motives that can be alleged in a cassation appeal: failure to observe or erroneous application of substantive law: or the failure to observe procedural standards under certain circumstances. In that respect, the regulation itself confines the cassation appeal to both substantive and procedural errors of law.

³⁷ Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

³⁸ Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 100; *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

³⁹ Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs, November 23, 2012. Series C No. 255, para. 101; *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

⁴⁰ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 188.

⁴¹ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Iván Teleguz, United States, July 15, 2013, para. 105

⁴² IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 208

48. Second, the Commission observes that this legal framework led to a judicial practice described in the section of established facts, recognized by the Supreme Court of Justice of the Nation in the federal sphere and which is applicable to the present case bearing in mind the convergence in the regulation for the cassation appeal in this area and in the Province of Mendoza, among other provinces. This practice has consisted of interpreting, restrictively, the legal framework governing the cassation appeal, so that issues of fact and appraisal of evidence were excluded.

49. By virtue of the above, in general terms, there has been a serious limitation in the law and in practice regarding the prospects for effectiveness of any allegation that did not fall within the purview of what had historically been considered as "reviewable" by means of a cassation appeal.

50. The Commission is not responsible for determining the possible questions that could have been asked in the present case if the restrictive factors had not been applied. As indicated by the Commission, "it is enough to determine that the alleged victims embarked on the appeals procedure under legal constraints as to what allegations they were able to make. (...) [A]n automatic exclusion of issues of fact or of evidence appraisal was in effect, thus doing away with any examination of the importance or nature of said issues in light of the concrete case. This exclusion is, in and of itself, incompatible with the comprehensive scope of the remedy as provided for in Article 8.2.h of the American Convention."⁴³

51. In any case, the limited scope of the cassation appeal was reflected in how these appeals were ruled on in this concrete case. It transpires from the proven facts that the respective appeals for annulment (cassation) included a series of arguments relating to the facts and the way in which the facts matched or failed to match the legal characterization of the crime. It was also argued that the appraisal of the evidence was inappropriate. Invoking Article 455 of the CPPC, both appeals were declared inadmissible. Pursuant to that article, a declaration of inadmissibility based on it implies that no pronouncement on the merits is made. The analysis conducted to substantiate formal declaration of admissibility has to do, *inter alia*, with the fact that no "grievance" was shown that was susceptible to be reviewed in cassation and that said grievance was based just on the defense's disagreement.

52. This implies that the arguments put forward by the defense through the filing of appeals for annulment and which raised questions regarding the facts and appraisal of evidence were considered manifestly inadmissible by the Criminal Division of the Superior Court of Justice of the Province of Córdoba and therefore did not warrant an analysis of the merits. The decision on appeals for annulment handed down by this authority includes grounds that show that the rejection of the appeals was due to the judicial practice of restrictively interpreting the regulations governing an appeal for annulment. Thus, it is noteworthy that the Criminal Division pointed to the inadmissibility of the appeal on the substantive ground when the appeal requests modifications of the facts on which the court of first instance based its legal appraisal. The Division likewise stated that the "High Court of the Province" is only competent to interpret the law, because the facts of the case are "definitively established" and its role consists "only" of deciding whether the appraisal of them is "legally correct."

53. As pointed out above, an appeal for annulment is the normal remedy against a conviction, so that it is the principal appeal to be analyzed in light of Article 8.2.h) of the Convention.

54. The above is consistent with the pronouncement by the Inter-American Court regarding the extraordinary appeal which is ruled upon by the same tribunal that issued the judgment being appealed and which, if admitted, is decided in respect of merits by the Supreme Court of Justice of the Nation.⁴⁴ The Court established that said appeal is not a channel for contesting criminal proceedings and that the grounds for determining the admissibility of such an appeal are limited to a review of matters relating to the validity of a

⁴³ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 208.

⁴⁴ Cf. I/A Court H.R., *Case of Mohamed Vs Argentina*. Judgment on Preliminary Objections, Merits, Reparations, and Costs. November 23, 2012. Series C No. 255, par. 103. See, also: IACHR, Report No. 173/10, Case 11.618, Oscar Alberto Mohammed, Merits, Argentina, April 13, 2011.

law, treaty, or constitutional norm or to the arbitrary nature of a judgment. It excludes questions of fact or evidence or legal matters pertaining to non-constitutional law.⁴⁵

55. Without prejudice thereto, the Commission also takes into account the fact that the extraordinary appeals filed by Messrs. Del Valle Ambrosio y Domínguez Linares were declared formally inadmissible by the Criminal Division of the Superior Court of Justice of Córdoba pursuant to the doctrine on arbitrariness developed by the Supreme Court of Justice of Argentina, which established that the purpose of that type of appeal was not to correct in a third instance decisions that the appellants deem to be mistaken. In those rejections, emphasis was placed on the "limited and exceptional" competence of the Supreme Court. Said inadmissibility was then ratified by the Supreme Court of Justice of the Nation when it declared the remedies of complaint to be inadmissible. In that manner, the extraordinary appeal was rejected *in limine*.

56. By virtue of the foregoing considerations, the Commission concludes that Messrs. Del Valle Ambrosio and Domínguez Linares had no appeal before a higher authority that might conduct a comprehensive review of their conviction, including questions of fact and of appraisal of evidence adduced by the defense through appeals for annulment. Accordingly, the Commission concludes that the Argentine State violated to their detriment the right to appeal a judgment established in Article 8.2.h) of the Convention, in conjunction with the obligations established in Articles 1.1 and 2 of the same instrument. The Commission further concludes that, as a result of the limited scope of the appeal for annulment and even more limited scope of the extraordinary appeal, the victims had no simple and effective judicial remedies in connections with the criminal proceedings that ended in their conviction, in violation also of the right established in Article 25.1 of the Convention, in conjunction with the obligations under Articles 1.1 and 2 of the same instrument.

3. Consideration regarding subsequent developments on the right to appeal a judgment

57. The Commission has concluded that the State of Argentina violated the right to appeal the judgment, as enshrined in Article 8.2 h) of the American Convention, to the detriment of Mr. Del Valle Ambrosio and Mr. Domínguez Linares.

58. These violations did not occur because of an isolated interpretation by a judge in the specific case of the victim, but rather occurred in the context of a legislation and practice that excluded a review of the facts and the appraisal and reception of evidence. Therefore, the Commission has concluded that the State failed to fulfill not only the right enshrined in Article 8.2 h) of the American Convention but also the obligation to adopt domestic law provisions as indicated in Article 2 thereof.

59. Bearing in mind the more general scope of these conclusions, the Commission cannot refrain from referring to the developments that have appeared subsequent to the decisions analyzed in the preceding paragraphs. In particular, the Commission highlights the judgment issued by the Supreme Court of Justice of the Nation on September 20, 2006, known as the "Casal judgment."

60. As indicated in the section on established facts, on the basis of this decision, the Supreme Court of Justice of the Nation reviewed the judicial practice of the courts in Argentina, especially the Court of Criminal Cassation Appeals, regarding the restrictive interpretation of the norms governing the cassation appeal and the resulting denial of said appeal when a request was made to review the issues involving facts or appraisal of evidence. Taking into account the relevant provisions of international human rights law and expressly mentioning Article 8.2 h) of the American Convention and Article 14.5 of the International Covenant on Civil and Political Rights, the Supreme Court of Justice of the Nation indicated the need to change this restrictive interpretation for a broader one that would not confine the review to issues of law,

⁴⁵ Cf. I/A Court H.R., *Case of Mohamed Vs Argentina*. Judgment on Preliminary Objections, Merits, Reparations, and Costs. November 23, 2012. Series C No. 255, par. 104.

but rather would include those issues of fact or appraisal of evidence, with the limitation to what is exclusively reserved to those who have been present as judges in the oral proceedings.⁴⁶

61. The Commission positively assesses the Casal judgment and views it as a preliminary effort to ensure the compatibility between judicial practices and Argentina's international human rights obligations. The clarification provided by the Supreme Court of Justice of the Nation is especially relevant, in the sense that the distinction between issues of fact and law must not be the determining element for the admissibility of a cassation appeal. The only limitation envisaged in the Casal judgment is the limitation associated with the evidence that was directly heard by the judge present at the oral proceedings, mainly testimonial evidence.

62. Nevertheless, according to available information, on the basis of IACHR's case system and monitoring work, this judgment has not led to sufficient changes in order to address the problems highlighted in the present analysis. One of the obstacles encountered by the Commission to conclude that the State has remedied this problem is the absence of enforceability of the Casal judgment. The Commission observes that the Supreme Court of Justice of the Nation abstained from declaring that Article 456 of the CPPN—governing the admissibility of cassation appeals and which, as indicated, is almost identical in terms of contents to Article 468 of the CPPC—said judgment constitutes a milestone in terms of interpretation but judges are not legally bound to enforce it.⁴⁷ Even further, the Commission notes that the milestone in terms of interpretation provided by the Casal judgment is not evident in the standard's wording.

63. It should be mentioned that, in 2010, the Human Rights Committee of the CCPR referred to the persistence of problems that prevent a substantive review of the judgments of conviction in Argentina. According to the above-mentioned Committee:

The Committee notes with concern the absence of procedural law and practice that would guarantee the effective implementation of the right set out in article 14, paragraph 5, of the Covenant throughout the country (article 14 of the Covenant). The State party should take the necessary and effective measures to guarantee the right of every person who is convicted of a crime to have the conviction and sentence reviewed by a higher tribunal. In this connection, the Committee recalls its general comment No. 32 on the right to equality before

⁴⁶ Some relevant excerpts of the decision:

[I]t must be interpreted that Article 8.2 h) of the Convention and Article 14.5 of the Covenant [International Covenant on Civil and Political Rights] require the review of all that is not exclusively reserved to those who have been present as judges in the oral proceedings. This is the only thing that cassation appeal judges cannot assess, not only because it would nullify the principle of transparency, but also because they do not directly examine it; in other words, regarding them there is a real limitation in terms of knowledge. It directly involves a factual limitation, imposed by the nature of things, and which must be assessed in each case.

(...)

Although it is certain that this can only be established in each case, what is certain is that, in general, there is not much present in the characteristic of the knowledge coming exclusively from the intermediation. As a rule, a large part of the evidence can be found in the case itself recorded in writing, whether as a document or expertise. The principal question is generally confined to witnesses.

(...)

[I]n short, it must be understood that Article 456 of the Criminal Procedures Code of the Nation must be construed to mean that it authorizes a broad review of the judgment, as extensively as possible on the basis of the maximum effort for review by the cassation appeal judges, in line with the possibilities and records of each particular case without magnifying the questions reserved for intermediation, inevitable only because of the prevalence of orality, in conformity with the nature of things.

This understanding is imposed as a result of [...] (b) the practical impossibility of differentiating between issues of fact and law, which inevitably tends to establish a sphere of selective arbitrariness (...).

⁴⁷ In the "Casal" judgment, it is indicated that Article 456 of the CPPN permits a restrictive interpretation but also admits a broad interpretation. In the words of the Supreme Court of Justice of the Nation: "(...) it is clear that, in the text of subparagraph 2 of Article 456 of the CPPN, there is nothing preventing another interpretation. The only thing that determines a restrictive interpretation of the scope of the cassation appeal is the legislative and historical tradition of this institution in its original version. The wording itself allows both a restrictive and a broad interpretation: the semantic resistance of the text is not altered nor does it go beyond the latter (...)."

courts and tribunals and to a fair trial, which emphasizes, in paragraph 48, the need to review substantively the conviction and sentence.⁴⁸

64. Afterwards, in 2013, the Inter-American Court issued its judgment in the case of *Mendoza et al.*, adopting the same stance as the IACHR regarding the Casal judgment. With respect to this, it pointed out that it “assesses positively the Casal judgment [...] with regard to the criteria it reveals with regard to the scope of the right to appeal the judgment before a higher judge or court.” The Court considered “that judges in Argentina must continue exercising control of conformity with the Convention in order to ensure the right to appeal a judgment pursuant to Article 8(2)(h) of the American Convention.” It instructed, also, as a reparation measure, the State to adapt its domestic laws to the parameters of the present court’s case law on the right to appeal the judgment before a judge or higher court.

65. Although the Inter-American Court called upon judicial authorities to monitor the enforcement of conventions regarding this, and in any case considered it was necessary to order, in the light of Article 2 of the Convention, an adaptation of the legal regulatory framework in line with the parameters of the judgment.

VI. CONCLUSIONS AND RECOMMENDATIONS

66. The Commission concludes that the State of Argentina is responsible for violating the rights to appeal the judgment and to judicial protection as enshrined in Article 8.2 h) and Article 25.1 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of Mr. Julio César Ramón Del Valle Ambrosio and Mr. Carlos Eduardo Domínguez Linares.

67. By virtue of the conclusions above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF ARGENTINA

1. Order the measures needed for Mr. Julio César Ramón Del Valle Ambrosio and Mr. Carlos Eduardo Domínguez Linares, if they wish, to file an appeal whereby they can obtain a broad review of the judgment of conviction, pursuant to Article 8.2 h) of the American Convention.

2. Provide comprehensive reparations for the violations declared in the present report, including tangible or intangible damages.

3. Order the legislative measures needed to adjust domestic law regarding cassation appeals to the standards set forth in the present report on the right enshrined in Article 8.2 h) of the American Convention. Furthermore, apart from the adjustment of the regulatory framework, ensure that judicial authorities exercise control over the enforcement of conventions when ruling on appeals against judgments of conviction in line with the standards set forth in the present report.

⁴⁸ Human Rights Committee. Concluding observations on Argentina. CCPR/C/ARG/CO/4. 31 March 2010. Para. 19.